

Spotted Dog Working Group Minutes – January 21, 2016

Agenda – Old Stage Road Access to WMA

Attending: Louis Smith, Dan McQueary, Gayle Tomlinson, Brian Quigley, Neil M. Horne, Bill Pierce, Jason Swant, John Beck, Liz Smith, Jim Flynn, John Hollenback, Doug Crachy, (Powell Co. Comm.), Brian Robbins (DNRC), Dave Dziack (FWP), Kelvin Johnson (FWP), Rick Northrup (FWP), Jason Lindstrom (FWP), and three guests.

The meeting was called to order by chairman John Hollenback.

There was extensive conversation about the Old Stage Road and Access; for ease of clarification the minutes have been divided by subject rather than chronologic order.

Meeting with Powell County Commissioners on January 20.

Bill Pierce reported on a meeting held January 20 with the Commissioners regarding opening the Old Stage Road (OSR) through Spotted Dog WMA to Avon. Eight people attended that meeting including community members and three committee members.

Commission chair Rem Mannix said they have decided to open the OSR. The road was never abandoned, but has been illegally closed by landowners for 45 years and during that time no one has wanted access. However, they have received pressure to open OSR for public access now that it is owned by FWP.

Jason Swant - It is a public road and the public has right-of-way access through the WMA. It falls under the rules of all other roads even though it has been closed illegally for 45 years. There are too many people who will influence what will happen going forward to continue to ignore the illegal closure, he said. Under the law it could be abandoned, but I do not think that is a viable option. Gates are there and the road is closed, but I'm not sure what they would do if someone used the road.

Neil Horne hopes there can be a type of reverse prescriptive easement since it has been closed for 45 years.

County commissioner Doug Crachy said the road is likely going to be open. Everyone wants it open in some form, but will not be an improved road for cars. We will do culverts, signage and weed control that will be on the schedule with other county roads. We don't get every road sprayed each year, but try to get the worst.

Lack of Transparency Addressed

The county commissioners said they had communication with the FWP in October, but nothing since.

Jason Swant - I don't think it is good for the department to ignore the commissioners.

Neil Horne - It was a really good meeting. We can make up all sorts of plans, but nothing will happen until the county commissioners and FWP sit at the table.

WMA Manager Dave Dziak said he and Darlene Edge met with commission chair Donna Young just before hunting season to discuss the pitfalls and advantages of opening the road. This was just before hunting season and there were other things going on at the time for FWP staff; Donna suggested holding off until spring. We talked about taking a tour, but with hunting season it would not have worked; so will plan a tour in the spring.

John Hollenback said this was the first time he heard about it. It is ok for FWP to talk to the county commissioners, but asked if they are trying to step out and make individual decisions.

“We need to be on the same page,” he said. “We’ve been asked to serve on this board and that is what we are trying to do.”

Jim Flynn remembered that at the very beginning of the land purchase discussion commissioner Mannix said the road will be an open public road. The concern from a management perspective is it will be open but not maintained and they will not be responsible for it. In the management plan the department needs to plan for a lot of people going through that property.

He added we have come to the point to talk about processes. The county commissioners make decisions, but have not talked with FWP since October. Before we can go further, we need to have some way to focus more. The first time I heard of this was in November.

If FWP has been talking with county commissioners about the road for some time, why were we not informed of it? We did not know what the landowners wanted, and they did not know what the landowners wanted. We need the process to be in step. The county commissioners are willing to accept suggestions without knowing what the department wants.

Liz Smith - The commissioners wanted to see some management plans before opening the road, and the group agreed they should hold off on opening it until they know how it is going to be managed.

County commissioner Doug Crachy said the commissioners have been waiting for FWP in their discussions on the road. There are a couple of areas where we may want to move the location of the road so there are not two roads close together.

Neil Horne - This is a good group, but it doesn’t matter if the question is about the road, grazing or whatever, there are certain criteria FWP has to follow. FWP has to get to the table more.

John Hollenback - Our group needs to be invited to any meetings or know about them. In the future we need to be more together so we have a united front. FWP has mentioned some seasonal closures and the county commissioners seemed agreeable. I think it can be worked out.

Jim asked Rick Northrup if the department has developed a plan. If so, when will it be out? A road through the middle of the property will have a tremendous impact on what you are going to do, he said. We are supposed to be representing the public. We have spent a lot of time, but still don’t know what you are going to do with the property.

Rick Northrup responded the committee will develop suggestions to take to the public – road, season setting, Christmas tree harvests, etc., but here will be substantial conflict if the road is open all year. In the winter snowmobilers will have a great impact on the elk. Having a road open during the summer is probably just fine, but we need to develop a balance to prevent erosion and because it is an elk winter range.

Jim Flynn said my question is if we want to discuss this subject again, when will we have the FWP proposal? If the road is going to be open, what do we tell citizens when they want to know what you want to do?

Rick Northrup - At the next meeting FWP will have their proposals together and present to them to the group. We are planning a tour in the spring to discuss the entire landscape.

Implications and Concerns of Opening the Old Stage Road

- Is there a need to have more public access?
- Will other access points be closed?

- Weed control and who is responsible
Rick Northrup said the public will call them(FWP) about weeds and not the county.
- Landowners are very concerned about fire with drought and the abundance of tall, old grasses
- Erosion and stream integrity
- Importance of identifying the road's center line
- Cost to the county for road reconstruction, signage and maintenance
- Who will pay for culverts and cattleguards
Gayle Tomlinson said the county will install cattleguards, but cleaning them out is the responsibility of the landowner.
- Where the road passes through state sections, how would it be handled ?
- Rights of landowners with inholding lands and their access
- How to prevent trespassing on private lands
- Who is responsible for enforcement of trespassing violations
- Consideration of seasonal closures
- WMA closure from Dec. 1-May 15
- May 15 may be too early to open the road in some years
- Concern for elk and wildlife management with more roads
- Implications regarding stretches of other old roads in the county to opening requests

Identifying Old Stage Road Location

There is some question as to where the road is exactly located, but it was agreed that it is important that it be correctly identified.

Doug Crachy - On the old maps the road location is pretty well defined; but we may have to put in some culverts.

Jason Swant - The Department has the obligation to help the county commissioners define where the right-of-way should go. Define the road boundary quickly – it's an open road and there will be traffic through the WMA, and if the road boundary is not defined there will be issues with private property trespass. If we want to have some influence to have the best route and travel plan, we need to do it quickly. I realize the road is not accessible all year, but do not know about snowmobiler restrictions.

County attorney Lewis Smith said at the commissioners' meeting the old road went to the reservoir and the county hoped to work out a way around the reservoir, but looking at the map Neil Horne said there are three roads within a mile of each other and that will influence where that road goes.

Bill Pierce said to identify any route it is incumbent on the county to determine it. It might be possible for the county personnel to use GPS to do this, but only if there is an adequate written record of where the road was. A survey would be best, but very expensive. It is not wise to open the road before the commissioners decide the location and the ramifications.

Doug Crachy assured the group the road will be defined before it is opened.

Louis Smith reminded the group the landowner on the Avon end will fight the road opening in court.

Neil Horne responded that this map shows the road doesn't go through McGraw's.

Brian Robbins said the route is a huge issue, and asked how would the department identify that route; by survey or generalized description?

Dave Dziack - There is a lot of history with this road and we talked with the county commissioners and Lewis Smith in great detail about the road, and decided we would do a tour to find the road. When you get to the reservoir the road ends there. The old road is tied into the ridgeway and Lewis is comfortable with that. It is ok to the reservoir, but it is fuzzy from there out. During the boundary survey to put in the new fence, the road crossed sectioned and came out on another corner. You can visibly see five roads as they migrate up and down the hill. Lewis said it would be necessary to choose the best route available. Remember the road is called the Old Stage Road; when driving a team with a wagon and it was muddy they found an alternate route.

John Beck - It is going to be very expensive for the county to locate the historical route and it may be feasible to go an alternate route. Signage will be important and once the route is determined; how will it be marked and how often so people will not be trespassing on other peoples' property and not following the road.

Brian Robbins - Location is the most important thing, if they do not put that road in the exact location pre-statehood. I would like to see more transparency from the county commissioners as to who is pressuring for opening and having some dialog with those individuals.

Dan McQueary - The National Guard used the road when they came from Helena to Deer Lodge. The wooden bridge above the reservoir and most of that part of the road was built by the National Guard. They came out between Louis' and Dan's.

Gayle Tomlinson wanted to know if the road is open, will it go through State property.

Brian Robbins - DNRC would be included in the management plan of the WMA and those guidelines will apply, like a block management area.

Bill Pierce - The county commissioners discussed deviating from the old road to go up and join the FS # 314 road. Wouldn't that need to be surveyed?

Dave Dziack - No doubt it would have to be surveyed.

Bill Pierce - I've had bad experiences when I've assumed where a road is.

Jim Flynn - My understanding is that the road starts on the Deer Lodge side, but there is disagreement as to where it goes on the north end. There is no clear path on the map. One of the ways is go through the WMA and join the Forest Service road. I suggest FWP come to some agreement.

Rick Northrup - Maintenance is as huge as marking a clear route

Liz Smith said there should be short and long range goals. It may take 3-4 years to do the property survey, repair and sign the road. It is going to be very, very costly and I don't know where the funding will come from, but it may be possible to open it in increments.

Montana Historical Foundation annual grants – Liz Smith said a lot of the identification of the road itself and its history as part of the Mullan Trail and how it was utilized in the 1800s, is available.

She said the MHF awards grants of \$500-\$5,000 annually. I realize \$5,000 won't go very far, but this could be used for the planning process and mapping of the road, she said. If the road is open, the public needs to be educated so they would be aware of why it is a historical site and to provide historical information. Since the people of Montana own this property there will need to be road maintenance and signage.

Ramifications of Opening the Road

Louis Smith - When you have a public road through the WMA there will be problems with landowners and FWP. People do not respect private property and they will not stay on the road.

You almost have to fence the road to keep people off private property – it will be expensive to fence and to patrol.

Gayle Tomlinson - It is not feasible for ranchers to fence the road because it will prevent cattle from getting to water. The road was closed for 45 years and no one wanted the road opened until FWP; no people wanted access then.

John Hollenback – The commissioners have the right to open the road, but I feel strongly that it's not good to do so; there will be ruts when it is muddy, and it doesn't take long before they create another road, and others will run up and down hills. There need to be proper crossings and ways to prevent erosion; it won't take long, but in some of those areas you will have major problems. I think it is a bad thing to do; it needs more planning and there are indications the commissioners would be willing to meet and discuss some section closures.

Enforcement

Neil Horne asked will enforcement be the responsibility of FWP or the County? If the county opens road the public will trespass on private land; maybe it's the sportsmen's responsibility.

Gayle Tomlinson - In 1983 Union protesters cut the gate protesting now-union workers on the pipeline. County law enforcement stopped them and enforced the road closure.

Landowner Concerns

Brian Quigley - Two major landowners are involved – what do they want? It's going to be very expensive for the county to do this.

Dan McQueary - One major landowner uses 1 ½ - 2 miles of the road; does he have a say when the road will be closed or not closed? Does he have access to his property?

Gayle Tomlinson – They cannot take away a landowner's access.

Bill Pierce - I felt his input would be the most valuable, but he was not able to attend the meeting yesterday.

Jim Flynn said we need to have Bill Mosier's input. We will put comments into a coherent form and at the next meeting will discuss these points.

Doug Crachy said a lot of people in Elliston are upset with the Forest Service road closures. He said if there is some way to keep access to SDWMA open it would help.

Gayle Tomlinson - Earlier homesteads were the reason for the road, now ranchers go up the creek.

Jason Swant asked if the FWP has rules that supersede any other landowners? Talk to the commissioners about how to limit impacts. There will be public access on that road, and my concern is that under public access there may not be any rule to be able to limit public access. No one else can put up a gate, but the county can, but not based on what a landowner doesn't want.

John Hollenback - Bill Mosier is afraid of the fire danger when it is so dry with that tall, old grass up there until and we need to have a management plan in place first to control some of that.

Bill Pierce - All aspects are tied together.

Dan McQueary - The problem is what are we going to do for the landowner to monitor people traveling? It doesn't matter what signage or fence; if they get stuck, they will cut the fence to get out. It should be open, but if it is open I will have to be up there every day.

We need something for the landowner that if there is a problem - here is where you can go to register, and what they can expect to deal with it. If it's open, you are putting a major burden on landowners on both ends of the road.

FWP is different than other landowners if they are allowed to close land from Dec. 1 – May 15; no one else can do that. Yes, it is a state agency, but still a landowner. Why can't Bill

Mosier say it is his management practice and he wants the road closed so he doesn't have to fence his cattle or because people are bothering the cattle?

The county still has the ability to abandon the road. Allowing one landowner to dictate parameters but not the other is not fair. You set rules for one, but the other can't?

John Hollenback said the sad thing is that the private landowner has to make the complaint.

When Will Access Via OSR Be Open

Rick Northrup - This group should come up with recommendations for the department to consider – times for closures, consensus on those times and some basis for the recommendation.

Jim Flynn asked what do you want to do with that property in the winter?

Rick Northrup - There is already a seasonal closure of the WMA from Dec. 1 – May 15. The FWP Commission rule is enforceable by law. It would be wonderful if the road is not open to maintain those values.

Jim Flynn - We did not have that information so could not tell the county commissioners.

Rick Northrup - We made that very clear at the last meeting; and emphasized winter closure to benefit the elk including no snowmobiles.

Brian Robbins -If the county commissioners keep the road open during hunting season, you may have to close a road elsewhere. No one advocated the road to be abandoned, but it could be open at certain times.

Bill Pierce - The department should look at some seasonal closure. I know it is a county road but you are putting the burden on the county commissioners. I wonder if we're going backwards on this regarding money the county will have to spend.

Spring:

Brian Robbins suggested that June 15-Oct 15 is an acceptable time for access.

John Beck - We used to get a lot of rain in June. A lot of that area is clay and I don't think they should be going through it. How do you approach an aspect that is more weather related?

Doug Crachy - There are consequences of spring breakup when it is muddy; it should be closed, but flexible depending on the weather.

Jason Swant - Under the public right-of-way, my understanding is that when the road is open, it is open except for fire and flood conditions. It's a county road with unrestricted access.

Doug Crachy - It has to be on a case by case basis.

Brian Robbins suggested it can be open to walk-in when it is muddy. The County has the authority to close a road temporarily – seasonal restrictions

Rick Northrup - We are very concerned about erosion and that impact on streams we are trying to restore

Hunting season:

Neil Horne advocates that OSR should be closed during hunting and some think you can snowmobile all winter.

Gayle Tomlinson – Would like access during hunting, access for retrieving game. If you kill an elk on FWP, do they have a right to go through private land?

Brian Quigley - You may get this access but you will lose other access – the Willow Glen Road is closed.

Dave Dziack replied it is open to motorized travel to the WMA, but cannot drive through – it's not a county road.

Snowmobiling:

Bill Pierce - OSR should be closed to snowmobiling because it would impact the elk winter range, but if there is public access, then it might be different.

Brian Quigley - I question the fact about snowmobile use harming the elk if the public stays on the county road. When I go snowmobiling around elk they do not pay any attention. The elk are not staying on the WMA anyway. I'm not saying to go out and beat the area, but allow the public enjoy it.

Conclusion:

John Hollenback - We are going to have some different opinions.

Brian Quigley - We need to look at all aspects of managing this (WMA); allow the public to enjoy it, put cattle out to graze. At the last meeting we talked about fire suppression and how to utilize the tools at hand. We are not looking at the whole picture.

John Hollenback - We have other aspects to discuss, but we are taking it one step at a time. Hopefully, by the end of the next meeting we will be able to move forward to another aspect.

Bill Pierce - Do not minimize the task before the county commissioners. I hope they will consider the ramifications.

Liz Smith - The property is owned by the public and FWP is the manager for the public.

Bill Pierce - We need to be smart about this, and weigh all the circumstances of all aspects. The county commissioners are making the decision, but we need to express our concerns.

Jim Flynn - We have some information to give FWP to consider, but we're not on the same page regarding the road.

Rick Northrup - You have identified the issues, but what is the group's recommendation? What is the level of standard that the county should be required to maintain.

John Hollenback - There is no sense opening it if it can't be maintained.

Brian Robbins - Who is liable if there is an accident?

Neil Horne - The landowner is liable; when the Forest Service created a road on Telegraph we took it off our property.

Bill Pierce - If the road is open and the county declares it is an unmaintained road, unless they purposely create a dangerous aspect, I don't think they will be liable.

Kelvin Johnson - There is a sign on the county road near my home saying it is an unmaintained road; so people know that if they get stuck in a snowdrift no snowplow is coming.

Liz Smith - We do not want to make a public announcement until this issue is finalized.

Secretarial/administrative tasks

Bill Pierce - we need to identify secretarial/administrative tasks.

John Hollenback replied Jodi plans to do better.

The next meeting will be Thursday, February 18.

Respectfully,
Acting Secretary
Pat Hansen